CRIMINAL APPEAL (DB) NO. 900 OF 2018

AGAINST THE JUDGMENT OF CONVICTION DATED 13H JULY 2018 AND ORDER OF SENTENCE DATED 18TH JULY, 2018 PASSED BY THE DISTRICT & ADDITIONAL SESSIONS JUDGE XIV, DHANBAD IN SESSIONS TRIAL NO.100 OF 2017.

Md. Kalam S/o Md. Hussain, R/o Azad Nagar, PO Bhuli, PS Bhuli, District Dhanbad, State Jharkhand.

… **Appellant**

-versus-

The State of Jharkhand … **Respondent**

For the Appellant : Mr. Anil Kumar Keshri, Advocate
For the Respondent : Mr. Vishwanath Roy, A.P.P.

PRESENT: SRI ANANDA SEN, J.
SRI PRADEEP KUMAR SRIVASTAVA, J.

J U D G M E N T

Dated, 24th September, 2026

By Court Appellant has preferred this appeal against the judgment of conviction dated 13th July 2018 and order of sentence dated 18th July, 2018 passed by the District & Additional Sessions Judge XIV, Dhanbad in Sessions Trial No.100 of 2017, arising out of Putki Police Station Case No.96 of 2016 [G.R. No. 3698 of 2016], whereby and whereunder, the appellant has been convicted for offences under Sections 302/307/449 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life and fine of Rs.25,000/- (Rupees Twenty Five Thousand) for offence under Section 302 of the Indian Penal Code and in default of payment of fine to further undergo simple imprisonment for 6 (six) months; rigorous imprisonment for 5 (five) years and fine of Rs.5,000/- (Rupees Five Thousand) for the offence under Section 307 of the Indian Penal Code and in default of payment of fine to undergo simple imprisonment for 3 (three) months; and rigorous imprisonment for 5 (five) years and fine of Rs.5,000/- (Rupees Five Thousand) for the offence under Section 449 of the Indian Penal Code and in default of payment of fine to undergo simple imprisonment for 3 (three) months. All the sentences have been ordered to run concurrently. It has further been ordered that Rs.30,000/- shall be given as compensation to Soni Parveen (P.W.3).

2. Prosecution case, as per the fardbeyan of P.W.4 Sabnam Parveen, recorded by Assistant Sub Inspector Meena Kujur on 24.08.2016, is that the deceased Husna Bano is her grandmother (Nani). The informant used to reside

since her childhood at her grandmother's place at Putki. Her elder sister was married to the appellant 14 years ago. Appellant and other in-laws, as named in the fardbeyan, always used to torture her elder sister. Once they had also attempted to burn her sister and also once tried to strangulate her. Her elder sister used to stay in separate house where her in-laws were not even providing food etc. Out of fear, her elder sister started residing at her grandmother's place at Putki. On 18.08.2016 at 02.00 p.m. the appellant came to her grandmother's place and started assaulting with a *sabbal* (iron rod used as a digging tool) due to which her elder sister got seriously injured. Seeing this, when her grandmother went to save her, the appellant assaulted her grandmother also with the said *sabbal.* As she was in washroom, when she came out, she saw that due to assault by the appellant, both her grandmother and her elder sister were seriously injured. She caught hold and dragged the appellant outside their house where other local people caught hold of him but later on he fled. Her elder sister and grandmother (deceased) were taken to Jeevan Nursing Home, Putki whereafter they were taken to P.M.C.H., Dhanbad and later on for better treatment, they were referred to RIMS, Ranchi. During course of treatment, on 24.08.2016 her grandmother (deceased) died.

3. On the basis of the *fardbeyan* of the informant Sabnam Parveen (P.W. 4), Putki Police Station Case No.96 of 2016 was registered for offences under Sections 448, 323, 452, 498A, 307, 302, 34 of the Indian Penal Code.

Police, after completion of investigation, submitted charge sheet against the appellant. Thereafter cognizance of the offence was taken and the case was committed for trial. Charges were framed against the appellant under four heads for committing offences punishable under Sections 302, 307, 449 and 452 of the Indian Penal Code, which were read over and explained to the appellant. Since the appellant pleaded not guilty, he was put on trial.

4. To bring home the charge against the appellant, the prosecution had produced 7 (seven) witnesses during trial.

P.W.1 Salim Khan is a seizure witness, who stated that from the place of occurrence, iron rod was recovered and seized by the police. The said iron rod was chiseled at one end. Seizure list was prepared at the place of seizure only. He identified his signature on the seizure list. Seizure list was marked Exhibit 1. He identified the accused in the dock and said that he had assaulted Soni and her grandmother with the said rod. He also stated that the grandmother of Soni died later on during treatment. He stated that he had snatched the rod from the hand of the accused. In cross examination, he stated

that the seizure list was not prepared in his presence. It was already prepared.

P.W.2 Tarannum Parveen is the sister-in-law of the accused. She stated that there was dispute between the appellant and her sister and earlier also this appellant used to torture her sister and once tried to set her on fire and also tried to strangulate her. She stated that because of the dispute, her sister was residing with her grandmother (deceased). On the date of occurrence, appellant entered the house of her grandmother with an iron rod and assaulted her sister and when her grandmother tried to save her, he assaulted her grandmother on her head, as a result of which she became unconscious. Both the injured were taken to the private hospital and thereafter to the P.M.C.H., Dhanbad. They were again sent to Ranchi, where on 24.08.2016, her grandmother died. She had also put her signature on the fardbeyan, which was marked as Exhibit 2. In cross-examination, this witness admits that earlier incidents of torture and assault of her sister was not reported to the police though it was reported to Panchayat.

P.W.3 is Soni Parveen (injured) who is the wife of this appellant. She stated that the date of occurrence is 18.08.2016, she was in her house along with others including the informant and the deceased. At about 2-3 p.m., this appellant came and started assaulting. The appellant assaulted on the head of this witness, as a result of which her head got fractured. When her grandmother came to save her, appellant also gave a blow on the head of her grandmother. Her grandmother died in course of treatment. She admitted that she had not filed any case earlier against her husband.

P.W.4 is Shabnam Parveen. She is the informant. She is also one of the granddaughters of the deceased. She stated that her elder sister Soni Parveen was married to this appellant 14 years ago. She stated that one year after her marriage, her elder sister was being tortured by her in-laws including the appellant and once they tried to burn her and also tried to strangulate her. Thereafter, her elder sister started living at her grandmother’s house. She stated that on 18.08.2016 at about 02.00 p.m. this appellant came with a rod and started assaulting. She admits that at that point of time, she was in bathroom, when she came out, she saw the appellant assaulting her sister on her head with a rod. When her grandmother went to save her, appellant gave a blow on her head. Thereafter this witness caught hold of the appellant and dragged him out of her house, but he managed to escape. She stated that her grandmother later on died during treatment. She also identified her signature on the fardbeyan and also the signature of her sister (P.W.2). In cross

examination, she has stated that this appellant used to torture her sister and used to demand dowry, but no case was reported to the police.

P.W.5, Dr. Aman Kumar Sahu is the doctor, who examined the injured Soni Parveen. He found the following injuries on her person:-

(i) Stiched wound right side of scalp – three in numbers of size 3 cm, 2 cm and 1 cm long, caused by hard and blunt substance

Opinion reserved till receipt of C.T. scan of brain.

Age of injury – within six hours

M.I. – Mole on lower lip

Registration No. of Patient – ERS 2175

He identified his signature on the injury report, which was marked Ext. 4.

On receipt of C.T. Scan being S.P. No.4262 dated 18.08.2016, he issued supplementary injury report of the above injured in which he found that nature of injury was simple. As per C.T. Scan report, there was

(i) haemorrhage contusion in bi-frontal lobe of brain.

(ii) Scalp haemotoma along right parieto occipital region.

He stated that the supplementary injury report is in his writing and signature, which was marked Ext. 4/1.

He opined that such injury is possible by iron rod.

P.W.6 is Dr. Nawal Kumar Singh, who had prepared the postmortem report of the deceased under the supervision of Dr. C.S. Prasad. As per the postmortem report, the following were found: -

(i) Average body built. Rigor Mortis present in eye lids and jaw. Abdomen not distanded. Cornea transparent and moist. Both eye lids black. Head bandaged and shaved. Mouth air way, endotracheal tube and foley's catheter in-situ.

(ii) Injuries and Wounds

(a) Lacerated stiched wound.

(i) 5 cm x 1 cm x soft tissue deep with five stich in right parietofrontal scalp

(ii) 4 cm x ½ cm x soft tissue deep with four stiches in right parietal region.

(b) Surgical stiched wound

(i) 22 cm cut with 30 stiches U shaped in left temporo

parieto frontal region reaching mid line of forehead.

(c) Internal injury

(i) There is diffused contusion of both temporo parieto frontal scalp and both temporalis muscles.

(ii) There is a three centimeter long crack fracture of frontal bone in mid line and 4 cm long crack fracture of frontal bone in left side.

(iii) Brain is contused as both sides with presence of sub-dunal blood and blood clots.

(iv) Surgical bone gap measuring 12 cm x 10 cm in left temporo parieto frontal bone with no bone covering.

Opinion

(i) Injuries and wounds noted above are antemortem in nature.

(ii) Surgical wounds are caused by sharp cutting instrument while other injuries by hard and blunt substance.

(iii) Death is due to head injury and its complications as a result of above noted injuries

(iv) Time since death – within six hours up to the time of postmortem examination.

This witness has stated that the postmorte report has been written by him and bears his signature and also that of Dr. Chandra Shekhar Prasad.

He has opined that all antemortem injuries except surgical wounds may be caused by iron rod (Shambhal) and above mentioned antemortem injuries are sufficient to cause death in ordinary course of nature.

Postmortem report was marked Ext. 5.

P.W.7 Albinus Bara is the investigating officer. He has stated about recording of fardbeyan of P.W.4 by Meena Kujur, which was marked Exhibit 2/2. The formal FIR was marked Exhibit 6. He has stated to have recorded the restatement of the informant (P.W.4). He has given details of the place of occurrence, which is a concrete and asbestos house of BCCL at Masjid Mohalla within Putki Police Station. He stated that there is a iron gate at the entrance of the house and there are two rooms and verandah inside. He has also given the boundaries of the place of occurrence. At the place of occurrence on being

pointed by the informant, he has seized the *Sabal* which was used in the assault. Seizure list was prepared and seizure was made in presence of independent witness Raja and Salim, which was marked Exhibit 1/1. He also stated to have recorded the statement of the injured witness P.W.3 as also statements of Salim Khan. He had produced the seized *sabal* in a sealed cover before the Court. Sabal was marked Material Exhibit 1.

5. The prosecution had produced following documents and material exhibits to substantiate its case, which were marked exhibits:-

Exhibit 1	Signature of Salim Khan on the Seizure List dated 12.09.2016
Exhibit 1/1	Seizure List
Exhibit 2	Signature of Tarannum Parveen on the Fardbeyan
Exhibit 2/1	Signature of Sabnam Parveen on Fardbyan
Exhibit 2/2	Fardbyan
Exhibit 3 to 3/1	Signature on inquest report
Exhibit 4 to 4/1	Two Injury Reports
Exhibit 5	Postmortem report
Exhibit 6	Formal FIR
Material Exhibit 1	Iron Sabal used in commission of crime

6. After closure of prosecution evidence, the statements of the appellant was recorded under Section 313 Cr.P.C wherein he claimed to be innocent. Appellant did not adduce any evidence in defence.

7. The Trial Court by judgment of conviction dated 13th July 2018 and order of sentence dated 18th July, 2018 passed in Sessions Trial No.100 of 2017 has convicted the appellant for offences under Sections 302/307/449 of the Indian Penal Code and appellant has been sentenced in manner as stated above.

8. Learned counsel appearing for the appellant submits that the Trial Court has convicted the appellant for committing offences under Sections 302, 307, 449 of the Indian Penal Code. It is his contention that no ingredients of Section 302 and 307 of the Indian Penal Code is attracted in this case. Prosecution has failed to put forth any substance to suggest that there was intention of the appellant to kill the deceased. He contends that Sections 302 and 307 of the Indian Penal Code are not attracted. It is his contention that the entire occurrence took at the spur of the moment. The fact that there was earlier dispute between the appellant and his wife should not be believed as the witnesses have stated that no criminal case was reported earlier.

9. Learned counsel for the State opposed the prayer of the appellant

and submits that the prosecution has been able to prove that the appellant gave fatal blow on the head of the deceased and the death was homicidal. Crime weapon was also recovered from the place of occurrence.

10. After hearing the parties and going through the Trial Court Records, we find that the eye witnesses, i.e., P.W.2, P.W. 3 and P.W. 4 have proved the fact that the appellant had entered the house. Witnesses have proved that the appellant has assaulted his wife, i.e., P.W.3 with an iron rod. The said iron rod was also recovered for which seizure list was also prepared.

11. As per the witnesses, it is clear that the appellant has assaulted his wife, i.e., Soni Parveen (P.W.3). Injury report in respect of P.W.3 Soni Parveen clearly suggests that the injuries were caused by hard and blunt substance. Soni Parveen, as per the medical report, sustained 3 (three) injuries on the scalp, which are 3 c.m., 2 c.m. and 1 c.m. long. Though as per the injury report, the doctor opined the nature of injury as simple, but the haemorrhage contusion in bi-frontal lobe of brain and haemmorrhage along right parieto occipital region are there. The doctor has opined that injuries might have been caused by iron rod also. Thus, it is clear that the appellant has assaulted Soni Parveen on head not only once, but multiple times. Thus, the conviction of this appellant for assaulting Soni Parveen under Section 307 of the Indian Penal Code cannot be interfered with.

12. Evidence also suggests that the deceased came to save her granddaughter, i.e., Soni Parveen, when this appellant assaulted her also with iron rod on her head. This fact has been consistently supported by the eye witnesses, P.W.2, P.W.3 and P.W.4. The injury was also substantiated by the doctor, who has opined that the death is due to said injury. Thus, the fact that the appellant has assaulted the deceased has been proved by the prosecution beyond all reasonable doubts.

13. Next question, which arises is whether the case comes within the purview of Section 302 of the Indian Penal Code or not. The offence ‘murder’ has been defined in Section 300 of the Indian Penal Code, which reads as under: -

> ***300. Murder – Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or***
> ***2ndly. – If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or***
> ***3rdly. – If it is done with the intention of causing bodily injury to***

any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

4thly. – If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any escuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1. – When culpable homicide is not murder. – Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

First. – That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly. – That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly. – That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation. – Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2. – Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3. – Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4. – Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation. – It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5. – Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent."

14. From the evidence also, I find that when the appellant was assaulting his wife, the deceased came to save her upon which this appellant gave blow on the deceased. This suggests that there was no premeditation on the part of the appellant to commit murder of the deceased, as the actual fight was going on between the appellant (husband) and the P.W.3 (wife). Assault on the deceased was on the spur of the moment. Thus, it cannot be said that this appellant had premeditated to commit the murder of the deceased. Nothing could be gathered from the evidence that the appellant had any intension to commit murder of the deceased.

15. In this context it is necessary to refer to section 304 part I of the IPC. The provision of law reads as follows:-

> ***"304. Punishment for culpable homicide not amounting to murder. – Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death;"***

16. In view of what has been observed, in our opinion, the appellant cannot be held guilty of the offence punishable under Section 302 of the Indian Penal Code, rather from the facts of this case, the appellant, can be held guilty for the offence under Section 304 Part I of the Indian Penal Code.

17. Thus, while setting aside the conviction of the appellant under Section 302 of the Indian Penal Code, we hold the appellant guilty of the offence punishable under Section 304 Part I of the Indian Penal Code.

So far as sentence for the said offence is concerned, the appellant has already remained in custody for more than ten years, thus, in our opinion, the interest of justice will be served by sentencing the appellant to the period already undergone by him in custody. The sentence also stands, accordingly, modified.

18. As held earlier, so far as conviction and sentence of the appellant under Section 307 of the Indian Penal Code is concerned, the same is not being interfered with as the prosecution has successfully established the guilt of the appellant under Section 307 of the Indian Penal Code in respect of the injured Soni Parveen (P.W.3).

19. So far as the conviction and sentence under Section 449 of the Indian Penal Code is concerned, the offence of house tresspass in order to commit the crime is established by the prosecution as the appellant had entered

the house of the deceased for committing the crime. We accordingly, uphold the conviction and sentence of the appellant under Section 449 of the Indian Penal Code.

20. This appeal is, accordingly, dismissed with the modification in the judgment of conviction and order of sentence of the appellant under Section 302 of the Indian Penal Code. However, we uphold the conviction and sentence of the appellant awarded under Section 307 and 449 of the Indian Penal Code. This appeal is, accordingly, dismissed with the said modification. The appellant, above named, shall be released from custody forthwith, if not wanted in connection with any other case.

21. Pending interlocutory applications, if any, stand disposed of.

22. Let the Trial Court Records be sent back to the Court concerned forthwith along with a copy of this judgment.

(Ananda Sen, J.)

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi
Dated, the 24th September, 2026
Kumar/Cp-03
NAFR/

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